

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

WESTFIELD INSURANCE COMPANY,

Plaintiff,

v

Case No. 2:11-cv-12773
Hon. Patrick J. Duggan
Magistrate Judge Mona K. Majzoub

**MILAN 2000 FURNISHINGS, LTD,
HIKMAT RAFOO A/K/A NICK RAFOO,
and TALMER BANCORP, INC. f/k/a
FIRST MICHIGAN BANK f/k/a PEOPLES
STATE BANK,**

CONSENT JUDGMENT

Defendants,

and

**TALMER BANCORP, INC. f/k/a FIRST
MICHIGAN BANK f/k/a PEOPLES
STATE BANK,**

Counter-Plaintiff,

v

WESTFIELD INSURANCE COMPANY,

Counter-Defendant,

and

**TALMER BANCORP, INC. f/k/a FIRST
MICHIGAN BANK f/k/a PEOPLES
STATE BANK,**

Cross-Plaintiff,

v

**MILAN 2000 FURNISHINGS, LTD AND
HIKMAT RAFOO A/K/A NICK RAFOO,**

Cross-Defendants.

MICHELE A. CHAPNICK (P48716)
GREGORY AND MEYER, P.C.
Attorneys for Plaintiff/Counter-Def.
340 E. Big Beaver Rd., Ste. 520
Troy, MI 48083
(248) 689-3920
mchapnick@gregorylaw.com

JOSEPH SADLER (P71829)
KRISTINA M. ARAYA (P74507)
WARNER NORCROSS & JUDD, LLP
Attorneys for Defendant/Counter-Pl/Cross-Pl
Talmer Bancorp
111 Lyon Street, NW, Suite 900
Grand Rapids, MI 49503
(616) 752-2000
jsadler@wnj.com
karaya@wnj.com

WILLIAM K. CASHEN (P39822)
CASHEN & STREHL, P.C.
Attorney for Defendants/Cross Defs. Milan
2000 and Rafoo
45700 Village Blvd.
Shelby Twp., MI 48315
(586) 532-4100
bcashen@cashenandstrehl.com

CONSENT JUDGMENT

Whereas, the instant matter, bearing Case No. 2:11-cv-12773 was filed by Westfield Insurance Company (“Westfield”) seeking a declaration of its rights under Westfield’s policy of insurance to Milan 2000 Furnishings, Ltd., (“Milan 2000”), Policy No. BOP 3 160 735, with the policy period July 10, 2007 to July 10, 2008 for certain locations including the property located at 51124 Sass Road, Chesterfield, Michigan (“the Westfield Policy”);

Whereas Westfield’s Complaint included, *inter alia*, claims against Milan 2000 for breach of contract (Count II) and concealment, misrepresentation and/or fraud (Count III);

Whereas, Milan 2000 acknowledges and agrees that during the policy period, Milan 2000 reported to Westfield Insurance Company that an alleged vandalism/theft loss that occurred at

51124 Sass Road, Chesterfield, Michigan on or about March 28, 2008 which damaged both real property as well as business personal property (“the Loss”);

Whereas, Milan 2000 acknowledges and agrees that on the date of the alleged theft loss, Milan 2000 was aware that Peoples State Bank had a security interest in Milan 2000’s business personal property;

Whereas, Milan 2000 acknowledges and agrees that on December 5, 2008, Milan 2000 submitted to Westfield Sworn Statements In Proof Of Loss for loss and damage to the building (“Building Proof of Loss”) as well as a Sworn Statement in Proof of Loss for loss and damage to business personal property (“BPP Proof of Loss”);

Whereas, Milan 2000 acknowledges and agrees that despite Milan 2000’s knowledge of Peoples State Bank’s security interest in the business personal property proceeds, it failed to identify Peoples State Bank on the BPP Proof of Loss as a loss payee and/or a party with an interest in the claimed business personal property;

Whereas Milan 2000 acknowledges and agrees that it intentionally concealed and/or misrepresented Peoples State Bank’s interest in the business personal property proceeds on the BPP Proof of Loss;

Whereas Milan 2000 acknowledges and agrees that in reliance on the representations made by Milan 2000 on the BPP Proof of Loss, Westfield issued payment to Milan 2000 only for the business personal property loss in the amount of \$228,044.00;

Whereas, Milan 2000 acknowledges and agrees that it received Westfield’s \$228,044.00 in policy proceeds but did not tender that check to Peoples State Bank and instead used those proceeds to pay its own bills;

This Court now being fully advised in the premises:

IT IS HEREBY ORDERED AND ADJUDGED that Milan 2000 Furnishings, Ltd. consents to judgment against it for breach of contract pursuant to Count II of Westfield's Complaint for its failure to disclose Peoples State Bank's interest in the business personal property proceeds on the BPP Proof of Loss.

IT IS HEREBY FURTHER ORDERED AND ADJUDGED that Milan 2000 Furnishings, Ltd. consents to judgment against it for concealment, misrepresentation and/or fraud within the terms of Westfield's policy pursuant to Count III of Westfield's Complaint for its concealment and/or misrepresentation relating to Peoples State Bank's interest in the business personal property proceeds on the BPP Proof of Loss.

IT IS HEREBY FURTHER ORDERED AND ADJUDGED that coverage under the Westfield policy is deemed void.

IT IS HEREBY FURTHER ORDERED AND ADJUDGED that Milan 2000 Furnishings, Ltd. consents to judgment against it in the amount of \$228,044.00 in favor of Westfield due to its breach of contract and concealment, misrepresentation and/or fraud.

IT IS SO ORDERED.

s/Patrick J. Duggan
Patrick J. Duggan
United States District Judge

Dated: December 4, 2012

I hereby certify that a copy of the foregoing document was served upon counsel of record on Tuesday, December 04, 2012, by electronic and or ordinary mail.

s/Marilyn Orem
Case Manager

Approved as to form and substance:

/s/ Michele A. Chapnick
MICHELE A. CHAPNICK (P48716)
GREGORY AND MEYER, P.C.
Attorneys for Plaintiff/Counter-Def.
mchapnick@gregorylaw.com

/s/ William K. Cashen
WILLIAM K. CASHEN (P39822)
CASHEN & STREHL, P.C.
Attorney for Defendants/Cross Defs. Milan 2000
and Rafoo
bcashen@cashenandstrehl.com